

output has increased. These facts are inconsistent with the claim that cable operators exercise significant market power.

B. Cable System Sale Prices.

Reported cable system sale prices have increased when expressed on a simplistic "per-subscriber" basis without regard to specific system characteristics or future prospects. Some critics of cable television have cited such increases as evidence of market power, relying on the q-ratio (the market value of an asset divided by its reproduction cost). They argue that, to the extent the q-ratio exceeds one, this evidences significant market power.

The q-ratio is hardly a simple mathematical exercise or certain barometer of market power. At best, the q-ratio, which was developed as a macro-economic indicator for monetary and fiscal policy analysis, is conceptually flawed and unreliable as an indicator of market power. It ignores a variety of market factors, including the value of intangible assets (which are particularly significant in an industry where continuing service and long-term subscriber relationships are important) and anticipated growth. Thus, the q-ratio is "subject to large individual errors and may often be seriously misleading." McFarland, "Evaluating q as an Alternative to the Rate of Return in Measuring Profit-

ATTACHMENT 5

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BEFORE THE

Federal Communications Commission

Federal Communications Commission
Office of the Secretary

WASHINGTON, D.C. 20554

In the Matter of

Reexamination of the Effective
Competition Standard for the
Regulation of Cable Television
Basic Service Rates

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MM Docket No. 90-4

COMMENTS OF TIME WARNER INC.

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February 14, 1991

The Cable Act was designed, inter alia, to allow the substantial investments necessary for expanded system and new programming -- and these have occurred.^{3/}

Thus, the Cable Act's goals of increased availability of cable service, increased program diversity, improved cable television technology, and competition in the video industry are being fulfilled.

While we recognize the Commission's statutory mandate to periodically review effective competition standards, we would caution the Commission to guard against reversal of the competitive benefits that it acknowledges have occurred under deregulation. An effective competition standard that reimposes rate regulation upon a significant number of cable subscribers without sensitivity to the adverse impact of substantial regulation would contravene Congress's mandate and undermine the many pro-consumer benefits resulting from deregulation.

The cable industry has made great strides since deregulation under the Cable Act to provide more subscribers with ever-expanding cable service offerings, resulting in more revenues for local government and the U.S. economy. For

3/ Report in MM Docket No. 89-600, 5 FCC Rcd 4962, 4967 (1990), recon. denied, FCC 90-418 (released December 31, 1990) (emphasis added) (footnote omitted) [hereinafter "FCC Cable Report to Congress"]; see also MM Docket No. 90-4, supra, Reply Comments of New York State Commission on Cable Television, at 5-10 (acknowledging positive aspects of deregulation, including increased penetration and diversity of programming, flat per-channel basic prices, and large investment in plant and rebuilds).

example:

- The number of basic cable subscribers has increased from 30 million in 1984, to 37 million in 1986, and to 49 million in 1990;^{4/}
- Franchise fee payments have ballooned from \$395 million in 1984, to \$519 million in 1986, and to over \$800 million in 1990;^{5/}
- The cable industry's contribution to the GNP has increased from \$25 billion in 1986 to \$42 billion in 1990;^{6/}
- The number of homes passed has risen from 40 million in 1984, to 52 million in 1986, and to 73 million in 1990;^{7/}
- The percentage of subscribers served by 30 or more channels has increased from 57 percent in 1984, to 72 percent in 1986, and to 89 percent in 1990;^{8/}
- Cable system programming expenditures have jumped from \$1.7 billion in 1984, to \$2 billion in 1986, and to 3.2 billion in 1990;^{9/}
- Cable industry plant investment has increased from \$1.1 billion in 1984 to \$1.7 billion in 1989;^{10/} and

4/ Television & Cable Factbook, Cable & Services Vols. (1984, 1986, 1990).

5/ NCTA estimate based on Paul Kagan Associates, Inc. data; Wall Street Journal, February 6, 1991, at A13, Col. 2 (FCC estimate).

6/ Bortz & Company, Inc., Impact 90: A Report of Cable Television's Impact on the U.S. Economy, January 1990, at 9 [hereinafter "Bortz Report"].

7/ Television & Cable Factbook, Cable & Services Vols. (1984, 1986, 1990).

8/ Television & Cable Factbook, Cable & Services Vols. (1986, 1990).

9/ NCTA estimate based on Paul Kagan Associates, Inc. and U.S. Copyright Office data.

10/ Cablevision, January 9, 1984, at 61; Cablevision, March 27, 1989, at 36.

- The number of national cable programming services, not even including regional services, has steadily grown from 49 in 1984, to 59 in 1986, and to 69 in 1990.^{11/}

With improved plant and exponential increases in diverse programming,^{12/} it is no wonder that cable subscribership has increased since deregulation. It is purely speculative for the Further Notice,^{13/} as well as several commenters,^{14/} to argue that increased consumer acceptance of cable television is somehow indicative of market power. Rather, consumers recognize the tremendous value of cable television, and they are entirely willing to accept reasonable price increases as cable operators make further investments to provide an improved product.

B. The Cable Industry's Incentives To Continue To Create New, Innovative Programming And Make Substantial Capital Improvements Should Not Be Destroyed.

The Commission must adopt a balanced, reasonable approach to avoid jeopardizing the benefits that cable has brought to the consumer. As noted, deregulation has allowed the cable

^{11/} NCTA, National Cable Network Directory.

^{12/} As the NTIA has noted, the birth and development of cable programming networks directly results from cable operators risking substantial funds. NTIA, Video Program Distribution and Cable Television: Current Policy Issues and Recommendations, June, 1988, at 10-12.

^{13/} Further Notice, *supra*, at ¶ 5.

^{14/} See, e.g., MM Docket No. 90-4, *supra* (Comments of the National Association of Broadcasters, at 3); *id.* (Reply Comments of the National Association of Broadcasters, at 8-9); *id.* (Reply Comments of the Consumer Federation of America and Telecommunications Research Action Center, at 11).